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97TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 97-58

DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 1982

REPORT

[To accompany S. 815]

ON

AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1982, FOR PROCUREMENT OF AIRCRAFT, MISSILES, NAVAL VESSELS, TRACKED COMBAT VEHICLES, TORPEDOES, AND OTHER WEAPONS, FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AND FOR OPERATION AND MAINTENANCE FOR THE ARMED FORCES, FOR CIVIL DEFENSE, TO PRESCRIBE THE AUTHORIZED PERSONNEL STRENGTH FOR EACH ACTIVE DUTY COMPONENT AND THE SELECTED RESERVE OF EACH RESERVE COMPONENT OF THE ARMED FORCES AND FOR CIVILIAN PERSONNEL OF THE DEPARTMENT OF DEFENSE, TO AUTHORIZE THE MILITARY TRAINING STUDENT LOADS, AND FOR OTHER PURPOSES

TOGETHER WITH

ADDITIONAL VIEWS

AND

MINORITY VIEWS

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE



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three succeeding fiscal years, on the equipment of the National Guard and Reserve components of the Armed Forces.

The committee strongly believes that well-equipped National Guard and Reserve components are essential to U.S. military preparedness. The report required by the bill will provide the committee and the Congress important information on the existing and future equipment needs of the major elements of our Reserve components. Such information is vital to effective congressional decisionmaking on equipping our Reserve forces.

Sec. 915. Authorization of Military Cooperation With Civilian Law Enforcement Officials

The committee recommends the enactment of a statutory provision which would clarify and reaffirm the authority of the Secretary of Defense to provide indirect assistance to civilian law enforcement officials, consistent with the principles established in the Posse Comitatus Act. (18 U.S.C. § 1385 (1976)).

The Posse Comitatus Act, enacted in 1878, embodies the inveterate and traditional separation between the military's mission and civilian law enforcement efforts. The committee recommendation would not alter that fundamental principle—military forces do not and should not provide direct assistance (e.g., search and seizure, arrest) to civilian law enforcement officials, except in accordance with the express legislative exceptions to the Posse Comitatus Act. Indeed, the committee's provision requires the Secretary of Defense to issue regulations to insure that this long-standing principle is continued.

However, the Department of Defense historically has provided some forms of indirect assistance to civilian law enforcement officials within the framework of the Posse Comitatus Act. For example, the Department has permitted customs officials to accompany routine military operations and share relevant information gathered in the course of these operations. The Department has also loaned military equipment for use by civilian law enforcement agencies. But due to the age of the Posse Comitatus Act and its rather vague legislative history on the subject of indirect aid, court decisions have failed to outline uniformly the precise limits of permissible indirect assistance. This diverse guidance has created some uncertainties as to the authority of the Department of Defense to provide such aid.

The committee recognizes that the Department of Defense is primarily concerned with military preparedness. But the committee believes that, where available, indirect assistance by the Department of Defense can help civilian law enforcement officials, especially in the area of drug enforcement. For example, the loan of equipment or access to base or research facilities, where it does not interfere with military preparedness, would avoid cost duplication in buying and maintaining such equipment and facilities.

Therefore, the committee recommends clarifying and reaffirming the authority of the Secretary of Defense—

(1) to provide to Federal, State and local law enforcement officials any information collected by military personnel (while such personnel are operating military equipment or otherwise) during the normal course of military operations. The existing practice of permitting

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equipment of the National Guard and Forces. Well-equipped National Guard to U.S. military preparedness. provide the committee and the the existing and future equipment of our Reserve components. Such congressional decisionmaking on

Cooperation With Civilian Law

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civilian law enforcement officials to accompany such operations to facilitate information sharing also is contemplated.

(2) to make available to such officials (generally on a loan or access basis) equipment or facilities, where such availability will not adversely affect U.S. military preparedness. The sale, donation or other outright transfer of such equipment to civilian law enforcement agencies shall be in accordance with existing statutes covering such transfers.

(3) to authorize assignment of members of the Armed Forces to train civilian law enforcement officials in the operation of loaned equipment and provide relevant expert advice, where such training and advice do not adversely affect U.S. military preparedness.

The Secretary of Defense would be authorized, not required, to provide this aid. And the Department of Defense could obtain reimbursement for any assistance provided when the Secretary determined such reimbursement was appropriate.

The committee's recommendation would neither enhance nor increase the authority of the military to gather or obtain intelligence information. The provision merely clarifies and reaffirms present law and codifies those decisions (concerning indirect assistance by the military) which permit the military to disseminate information (such as the movement of ships and planes likely to be transporting narcotics) to civilian law enforcement officials which it receives in the routine course of military business.

There have been a number of express exceptions to the Posse Comitatus Act.² So there is ample precedent for a provision which merely clarifies and reaffirms the authority of the Secretary of Defense under that statute. The Department of Defense and Department of Justice support the committee proposal.

The committee believes its recommendation will protect federal personnel from potentially disparate court opinions by clarifying and reaffirming the existing authority of the Secretary of Defense. At the same time, the committee's proposal will preserve the traditional and proper separation between military missions and civilian law enforcement activities.

Sec. 916. Enforcement of Selective Service System Registration

Last year, the Congress voted to resume male registration under the Military Selective Service Act to enhance the mobilization capability of the United States. This step was and remains essential, especially in light of the current and projected shortages of trained military manpower that would be available in the event of a national emergency.

The results of Selective Service registration to date are encouraging and the committee applauds this effort. However, the committee also recognizes that the continuing registration now in place will not be

² See, e.g., 10 U.S.C. Sections 331-334 (1976) (Suppression of insurrections and other unlawful combinations under specified circumstances); 16 U.S.C. Section 23, 78 (1976) (Protection of federal parks); U.S.C. Sections 112, 1116 (1976) (Protection of foreign officials, official guests, and other internationally protected persons); *id.* Section 351 (Crimes against members of Congress); 22 U.S.C. Sections 408, 461-462 (1976) (Enforcement of neutrality laws); 25 U.S.C. Section 180 (1976) (Removal of persons engaged in unlawful activities on lands belonging to Indian tribes); 42 U.S.C. Section 97 (1976) (Execution of quarantine and health laws); *id.* Section 1089 (Execution of warrants relating to enforcement of certain civil rights laws); *id.* Section 3756 (Loan of services, equipment, personnel, and facilities to the Law Enforcement Assistance Administration); 43 U.S.C. Section 1065 (1976) (Removal of unlawful enclosures from public lands); 48 U.S.C. Section 1418 (1976) (Protection of the discoveries of a guano island); 50 U.S.C. Section 220 (1976) (Enforcement of the customs laws).